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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

United Native American )  
Telecommunications, Inc. )  
Request for Waiver )

CC Docket No. 96-45

DA 98-949

**Reply Comments to Opposition of AT&T Corp. and Request For Extension  
Of Filing Date for Reply Comments**

UNITED NATIVE AMERICAN TELECOMMUNICATIONS, INC. (UNAT ) requests an extension of the filing date for reply comments to the date of this filing. As of the morning of Friday, June 5, 1998, UNAT had not received any filings that commented on its request for a waiver. After diligent efforts to find out if anyone had filed comments regarding UNAT's request for waiver, UNAT was told that the computer was down by Commission staff as well as International Transcript Service (ITS), the Commission's official copy service. Apparently, this computer contained the information about any and all filings made. Late Friday, June 5, 1998, UNAT received a misaddressed envelope from AT&T containing their filing. Upon requesting an extension via the electronic filing system, a message was received that the docket was unavailable for ECFS. On Monday, June 8, UNAT was finally informed by ITS that AT&T was the only filing. Due to the geographic limits for delivery on a timely basis, the delay in receiving the comments, and time required to submit an appropriate response, UNAT requests an extension of time to June 18, 1998, be granted to prepare and file these comments.

UNAT is justified in its request for a petition for waiver of the Universal Service Fund (USF) Contribution. UNAT reiterates that without the listed sole commercial customer,

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UNAT would be an entity that exclusively provides telecommunications services only to the U.S. government and would, therefore, be exempt.

The approach to the issues is not as clear and unambiguous as AT&T presents. UNAT requests a waiver since it believes that the U.S. Government may be exempt from payments since the service it sells to the government is all intra-government service. Universal Service Administration Corporation (USAC) indicates in its Form 457 worksheet instructions revised 8/97 on page 4 "Government entities that purchase telecommunications service in bulk on behalf of themselves, e.g. state networks provided to schools and libraries, are not required to contribute. . . . Similarly, if an entity provides interstate telecommunications exclusively to public safety or government entities and does not offer services to others, that entity is not required to contribute." This indicates that the government is not required to contribute and UNAT would be exempt if it were exclusively servicing the government.

USAC has indicated that this is a problem that should be dealt with via a waiver. They too have some confusion as to the billing of the USF contribution charge to government entities. In UNAT's discussions with USAC, they noted that it appeared that the contribution would not be required if UNAT formed a separate corporation for the single commercial line. They indicated that perhaps a waiver should be requested from the FCC if a separate corporation was not formed. UNAT has chosen the waiver over the separate corporation.

The United States Department of Defense through its Defense Information Systems Agency and the Defense Information Technology Contracting Organization (DITCO) has doubts as to the payment of the allowable passed-through USF contribution charges. After a query as to whether DITCO would pay the USF contribution charge that is authorized to be passed through to the end user, DITCO stated that they would pay and then further states through an apparent generic letter dated May 18, 1998 (See Exhibit I):

"The Defense Information Technology Contracting Organization (DITCO) has not yet determined whether any or all of the Universal Service Fund (USF) is an appropriate charge. You are therefore advised that the payment of such USF charges is made under protest and that DITCO reserves the right to recoup all or any part of such charges paid."

Paragraph 800 of the Universal Service Fund Order<sup>1</sup> states "We also find, however, that government entities that purchase telecommunications services in bulk on behalf of themselves, e.g., state networks for schools and libraries, will not be considered 'other providers of telecommunications' that will be required to contribute." UNAT contends that DITCO, as a government agency, is purchasing services in bulk from UNAT who is purchasing them from others as a reseller. These services are intra-governmental services. DITCO may be contending that it is exempt from the pass-through Universal Service Charges charged to them by all communications carriers as set forth in this letter marked Exhibit 1.

If a waiver of Universal Service contribution charges for UNAT is not forthcoming, a clarification is needed that the government **is required to pay** the pass-through Universal Service contribution charges. If it is correct that the government does not need to pay those charges, then the revenues related to the government need to be exempt. Those revenues should include those for facilities based sellers and for resellers of telecommunications services.

Computation of USF Contribution charges are based on last years revenues and projected expenses. UNAT has no objection to the method of computing the ratio. However, in the actual implementation of the USF Contribution collection, USAC asks the companies to actually pay the charges on the basis of last year's revenues. Those telecommunications companies who have revenues that decrease are expected to carry the load for those

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<sup>1</sup> FCC 97-157 In the Matter of Federal State Joint Board on Universal Service, CC Docket No. 96-45 Adopted: May 7, 1997 Released May 8, 1997. FCC 97-157

telecommunications companies that have an increase in revenues but are not expected to pay the universal service charge on the current revenues.

The current customers are carrying the load if the revenues decrease or otherwise reaping the benefits of an increase in revenue and the change in charges or lack thereof. Even with the forward looking long range incremental costs (FLRIC), the actual customer charges will surely be based on the services that are currently being used and not on services which may be used in the future.

For example, UNAT billed \$150,010 less in the month of March 1998 than the contribution basis for that month (the six (6) month average for 1997.) That means that approximately \$5,865 more Universal Service Support Charge is billed to UNAT for last years' revenues than would be billed if the computed 3.5% is applied to this year's actual month's revenue. The 3.5% billing percentage computed becomes 5.41% as a percent of the revenues. The carrier that now has the increased revenues will be charged less as a percentage of their total revenues. The carrier that has a downward dip in revenues will not only loose the revenues but be penalized for losing a portion of its billing to someone else. To a company with a declining share of the market, as competition takes a portion of the revenues, the USF contribution percentage of current revenue will increase. Any potential for efficient operations will be penalized a percentage of the lost revenues even though other actual costs may go down.

A small company such as UNAT may be severely financially damaged by the timing of the USF contribution charge and the inability to collect from current customers. The timing of the USF charges and the possible uncollectibility due to the government payment under protests should make the significance of nationwide concern.

AT&T states that "UNAT fails to show good cause for a waiver of the commission's rules, and therefore, its waiver request should be denied." On the contrary, UNAT has

shown good cause due to the high percentage of government services offered, the almost negligible commercial revenues, and the question as to the ability to collect the passed through USF contributions from the U.S. Government.

AT&T CONTENTS THAT "There is no exemption from USF contribution obligations of mandatory contributors on account of the fact that such a party serves government entities." As stated above, UNAT believes the exemption clearly exists in Paragraph 800 of the USF order.

AT&T also contends "Nor is there a restriction on its ability to collect its USF contribution from its government customers." The ability to collect is in doubt, as described above, and AT&T should be just as concerned as UNAT that this matter be resolved. The ramifications of the U.S. Government not being required to pay the pass-through contributions are significant in dollars and administration.

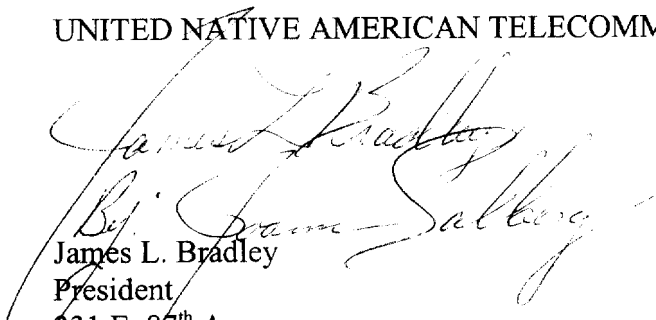
AT&T states "UNAT has not, and apparently cannot, show that its annual contribution is less than \$10,000. To the contrary, it has demonstrated that for a three-month period its contribution has exceeded 10K per month." In analyzing UNAT's contribution computed without the government revenues the commercial revenues generate USF contributions of approximately \$195 per month or \$1,171 for six months. The minor amount of commercial revenues along with the unknown collectibility of the government contributions, make the waiver due to the government service a necessity. The USF Contribution without the government revenues would show the status to be the de minimus or non-reporting area.

For the above reasons, the Commission should grant UNAT'S petition for a waiver of the USF Contribution. If that is not possible, the Commission should clarify that the government is obligated to pay the passed-through USF contribution charges. Clarification as to whether the government is to pay the USF contribution amounts or not pay the USF contribution charge as passed through would be a significant factor in the

survivability of the company. If the waiver is not issued and the U.S. Government is not required to or will not pay the pass-through USF contributions and the USF Contribution continues to be collected on revenues earned in prior years, any seller or reseller with fluctuating revenues and the U.S. Government as a client will have a significant problem of financial survival.

Respectfully submitted,

UNITED NATIVE AMERICAN TELECOMMUNICATIONS, INC.



James L. Bradley  
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**DEFENSE INFORMATION SYSTEMS AGENCY**  
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IN REPLY  
REFER TO: Plans and Procedures (DT4)

18 May 1998

The Defense Information Technology Contracting Organization (DITCO) has not yet determined whether any or all of the Universal Service Fund (USF) is an appropriate charge. You are therefore advised that the payment of such USF charges is made under protest and that DITCO reserves the right to recoup all or any part of such charges paid.

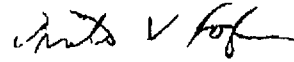
In that your previous invoices have not consistently identified USF charges, DITCO requires that your company provide a summary listing of all USF charges previously included in its invoices since 1 January 1998. This information is required to be provided to DITCO/DTC4, 2300 East Drive, Scott AFB, IL 62225-5406, not later than 31 July 1998.

Effective 1 June 1998, DITCO requires that you identify all USF charges against DITCO contracts/orders through normal invoicing procedures. This should be accomplished in all future invoices through the use of the Uniform Service Order Codes (USOCs), line items, or as a percentage of charges.

The above information is required pursuant to the USF order and subsequent pronouncements of the Federal Communications Commission (FCC). In its initial order which purportedly expanded USF support, the Commission stated "to the extent that carriers seek to pass all or part of their contributions on to their customers in customer bills, we wish to ensure that carriers included complete and truthful information regarding the information amount." Federal-State Joint Board on Universal Service, First Report and Order, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1997), at para. 855. Moreover, in its most recent report to Congress on Universal Service, the Commission reiterated its concern that carriers provide clear and accurate information to subscribers regarding these charges. Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579 (rel. May 8, 1998), at paras. 19-20.

Your immediate attention to this matter is appreciated. Should you have any questions concerning this letter, please contact Mr. Con Hough, DITCO/DT41, at (618) 220-9768.

Sincerely

A handwritten signature in dark ink, appearing to read "Milo V. Fogle". The signature is fluid and cursive, with the first name "Milo" and last name "Fogle" clearly distinguishable.

MILO V. FOGLE  
Lieutenant Colonel, USAF  
Deputy Director  
Plans & Procedures Directorate



CERTIFICATE OF SERVICE

I, Kenneth E. Trout, CPA, of KET, Inc., do hereby certify that on this 15th day of June, 1998, a copy of the Reply Comments to Opposition of AT&T Corp. and Request for Extension of Filing Date for Reply Comments was sent by U.S. Express Mail, postage prepaid, to the parties listed below.

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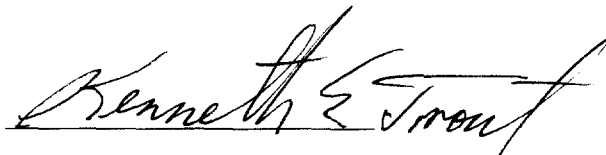
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Signed

Kenneth E. Trout  
Certified Public Accountant  
KET, Inc.